



**Montana Department of
ENVIRONMENTAL QUALITY**

1075396 - R8 SDMS

Brian Schweitzer, Governor

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LEGAL UNIT

Remediation Division

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June 12, 2007

Matthew Cohn, Esq.
Mail Code 8ENF-L
USEPA Region 8
1595 Wynkoop Steet
Denver, CO 80202-1129

RE: Confidentiality Agreement Between USEPA and Montana DEQ Relating to
Settlement Negotiations with WR Grace and Kootenai Development Company.

Dear Mr. Cohn:

Attached is a printed copy of the above-described confidentiality agreement that we tried, unsuccessfully, to e-mail to you. I was not sure if you had received all the edits to the agreement by Laura Vachowski and Bill Kirley. I thought it would be easier, and maybe faster, to mail the printed copy to you for your review and consideration of all the Departments proposed changes. Feel free to call me at (406) 841-5021, with any questions or concerns.

For your information, the changes highlighted in yellow, were discussed in our May 30, 2007 conference call. The rest of the changes were made earlier by Laura and Bill, but I was not sure all the changes had been transmitted to you. I look forward to hearing from you, and hopefully we can resolve any electronic document-sharing problems. The State of Montana uses Microsoft Office Word 2003 as its primary word processing program. I also have access to Wordperfect 10.

Sincerely,

Kirsten H. Bowers
DEQ Legal Counsel
Remediation Division

WordPerfect Document Compare Summary

Original document: G:\LEG\CASES_REMEDIATION\LAURA\LIBBY\OU3 state epa confidentiality agreement.wpd

Revised document: G:\LEG\CASES_REMEDIATION\LAURA\LIBBY\OU3 state epa confidentiality agreementEdited.wpd

Deletions are shown with the following attributes and color:

~~Strikeout~~, Blue RGB(0,0,255).

Deleted text is shown as full text.

Insertions are shown with the following attributes and color:

Double Underline, Redline, Red RGB(255,0,0).

The document was marked with 5 Deletions, 9 Insertions, 0 Moves.

**CONFIDENTIALITY AGREEMENT BETWEEN THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY AND THE STATE OF MONTANA
DEPARTMENT OF ENVIRONMENTAL QUALITY REGARDING SETTLEMENT
NEGOTIATIONS FOR AN OU3 REMEDIAL INVESTIGATION/FEASIBILITY STUDY
WITH W.R. GRACE AND KOOTENAI DEVELOPMENT COMPANY**

WHEREAS, the United States Environmental Protection Agency (EPA), ~~intends to~~
~~engage in settlement negotiations with W.~~ is addressing Operable Unit 3 (OU3) of the
Libby Asbestos Superfund Site (Site) under the Comprehensive Environmental
Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601
et. seq., and has determined that W. R. Grace & Company, W. R. Grace & Co. - Conn.,
and Kootenai Development Company (Respondents) are responsible parties under
Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for
performance of response actions and for response costs incurred and to be incurred at
the Site;

WHEREAS, the EPA intends to engage in settlement negotiations with the
Respondents to arrange for the performance of an OU3 Remedial
Investigation/Feasibility Study (RI/FS) by the Respondents under CERCLA;

WHEREAS, the State of Montana Department of Environmental Quality (DEQ)
intends to participate in the settlement negotiations with Respondents pursuant to 40
CFR §300.520(b);

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WHEREAS, this Agreement shall be applicable to and binding upon EPA and
DEQ (individually "Party" and collectively "Parties");

Deleted: the State of Montana,
including its agencies

Deleted: ,

WHEREAS, the Parties intend to coordinate and work together in settlement
negotiations with the Respondents;

WHEREAS, the Parties share close and common interests in pursuing settlement

negotiations with the Respondents and wish to work together to protect their common interests by communicating in confidence about claims, settlement strategy and other subjects pertaining to the above-described claims and settlement negotiations. The Parties accordingly agree that the sharing of information by their employees, consultants, agents and counsel will further their common enforcement goals;

WHEREAS, the Parties do not intend through their consultations or communications, either before or after the initiation of litigation, to waive any privileges such as, but not limited to, attorney-client and work product privileges, which would otherwise attach to any information, documents, or communications shared among the Parties. The Parties specifically intend that all such privileges shall be preserved, and that privileged information shall be protected from disclosure to the Respondents or to any third party, except with respect to disclosure agreed to by the Parties and disclosures which are, as required by Court order, or otherwise mandated pursuant to federal law.

NOW THEREFORE, the Parties hereby agree as follows:

1. Non-Waiver. By exchanging documents and communications with each other, the Parties do not waive any privilege, immunity, or other basis for confidentiality that otherwise applies to these documents and communications.

2. Confidentiality. If the Parties exchange any document or record of communication with each other that otherwise is claimed to be privileged, confidential business information, immune from disclosure to the public, or subject to any other legal

claim of confidentiality, the Party sending such document or record of communication shall identify the sender and shall stamp or otherwise mark each such document or record of communication as "privileged and confidential". The Party receiving such document or record of communication shall take measures to ensure that each such document or communication remains confidential, including but not be-limited to: (a) maintaining each such document or record of communication in a separate file from non-privileged documents or electronically designating the document as privileged in a database; (b) restricting access to any privileged file, document or record of communication to the receiving Party's authorized employees and consultants; (c) requiring the Party's employees and consultants to maintain the confidentiality of any privileged document or record of communication, including but not limited to litigation or settlement plans, offers or strategy; and (e) asserting the appropriate privilege(s) to decline any requested disclosure of any such document or record of communication to any person who is not a Party to this Agreement.

3. Disclosure by Agreement. As allowed by applicable law, Parties may disclose documents, communications, or information to non-parties with the express, written permission of the authorized representative of the Party who provided the information and the consent of the other Parties, or as required by court order or as otherwise required by federal law.

4. Inadvertent Disclosure. Any disclosure by a Party that is inconsistent with this Confidentiality Agreement shall not waive the confidentiality of such documents or communications.

5. Common Interest Privilege. The Parties agree and acknowledge that the

common interest privilege and confidentiality established by this Agreement is held jointly by both Parties and that the Parties are not authorized to unilaterally waive the privilege with respect to any information or documents shared pursuant to this Agreement.

6. Necessary Measures. Each Party shall take all necessary and appropriate measures to ensure either that any person who is granted access to any confidential information or documents shared pursuant to this Agreement is familiar with the terms of the Agreement and complies with such terms as they relate to the duties of such person or that an official records center regulates the dissemination of the information in accordance with this Agreement.

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7. Public Records Law. The Parties ~~agree that EPA is~~ acknowledge that the information, documents and records of communication related to this CERCLA action are subject to the Freedom of Information Act, but that certain documents and information that may be exchanged may be exempt from disclosure under 5 U.S.C. §552(b), and that furnishing such information or documents to the Parties shall not invalidate the application of any such exemption. ~~The Parties agree that the States may be subject to similar applicable exemptions and agree that furnishing such information and documents to the Parties does not invalidate the application of an applicable exemption.~~

8. Termination. Any Party may terminate its participation in this Agreement by thirty (30) days prior written notice to the other Parties. However, the provisions of this Agreement, including the confidentiality requirements of paragraph 2, shall continue to apply to all documents and communications exchanged prior to or during the pendency

of this Agreement. The terminating Party shall return all copies of privileged documents provided pursuant to this Agreement upon request by the Party who provided the information.

9. Counterparts. This Agreement may be executed in counterparts.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: _____

By:

David Janik, Acting Director
Legal Enforcement Program
United States Environmental Protection Agency

FOR THE MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY:

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Date: _____

By: _____

Richard H. Opper, Director

Montana Department of Environmental Quality

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Deleted: Office of the Attorney
General

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Date: _____ By: _____

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Montana Department of
Environmental Quality